

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

CLARENCE SUMMERS,	)	
Institutional ID No. 1126279,	)	
SID No. 6824901,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	5:11-CV-00150-BG
OFFICER S. ZABICA,	)	ECF
CO III,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

Appearing *pro se* and *informa pauperis*, Plaintiff Clarence Summers, an inmate incarcerated by the Texas Department of Criminal Justice (TDCJ), filed this action pursuant to 42 U.S.C. § 1983. The United States District Judge transferred this case to the undersigned United States Magistrate Judge for further proceedings. Pursuant to the order of transfer the undersigned now files this Report and Recommendation.

On April 2, 2012, Summers filed a motion requesting dismissal of this action. (ECF No. 9.) In the motion, Summers states that the relief he requested in his Complaint has been granted.

Pursuant to Fed. R. Civ. P. 41(a)(2), a court may grant a plaintiff's request to dismiss an action "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). When deciding whether to dismiss a case pursuant to Rule 41(a)(2), a court "should weigh the equities and make a decision which seems fairest under all the circumstances." *Am. Cyanamid Co. v. McGhee*, 317 F.2d 295, 298 n.4 (5th Cir. 1963) (quoting James Wm. Moore, et al., *Moore's Manual: Federal Practice & Procedure* § 1907(1), at 1400 (1962)).

Having weighed the equities and all the circumstances, the undersigned hereby recommends that Summers's request be **GRANTED** and that his case be **DISMISSED** without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

Dated: April 3, 2012.

  
NANCY M. KOENIG  
United States Magistrate Judge